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### **REMARKS**

Upon entry of the above amendments, claims 26 and 30-44 will be pending in this application. Claims 26 and 30-33 are placed in independent form, incorporating all the elements of the claims upon which they previously depended. The spelling of the word "terephthalate" is corrected in claims 26 and 42.

#### **Section 102 and 103 Rejections**

The Office Action rejected all claims under either 35 U.S.C. § 102 or 35 U.S.C. § 103 over U.S. Patent 6,074,762 to Cretekos. All claims rejected under Section 102 are cancelled. The remaining pending claims (26, 30-44) were rejected under Section 103 only.

U.S. Patent 6,074,762 is a reference under both Section 102(a) and Section 102(e).

A Rule 131 Declaration is submitted with this Response. This Declaration shows that Applicants are entitled to an invention date prior to the issue date of the '762 Patent. Accordingly, the Declaration removes the '762 Patent as a prior art reference under Section 102(a).

With respect to the '762 Patent as a reference for obviousness derived from Section 102(e), Section 103(c) provides: "Subject matter developed by another person, which qualifies as prior art only under . . . [102(e)] . . . , shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person . . ." Since the '762 Patent is removed as a reference under Section 102(a) by the Declaration submitted herewith, it "qualifies as prior art only under" 102(e). The present application and the '762 Patent are commonly owned (see Terminal Disclaimer filed with Response to Office Action filed December 6, 2002). Thus, applying 103(c), Applicants traverse the obviousness rejections under Section 103 and claims 26 and 30-44 are now allowable.

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### **Obviousness Type Double Patenting Rejections**

On pages 8-9 of the Office Action, claims 14-18 and 22-25 were rejected under the doctrine of obviousness-type double patenting over U.S. Patent 6,472,077. Filed with this Response is a Terminal Disclaimer disclaiming the term of any patent issuing from the present application that would extend beyond the term of U.S. Patent 6,472,077. No further response is considered necessary.

### **New Claims**

New Claims 45-47 are submitted to more particularly define certain functional and heat-sealable layers of the claimed film structures. Specifically, these claims recite specific materials that may be incorporated into these layers. In much the same manner, as indicated in the Office Action, that the '762 Patent does not disclose the use of a cavitating agent, the '762 Patent also does not disclose these materials for inclusion in functional and heat-sealable layers. Therefore, new claims 45-47 are allowable.

### **Conclusion**

Consistent with the foregoing, Applicants' claims 26 and 30-47 are in condition for allowance. Consideration of these claims with an early Notice of Allowance is respectfully solicited.

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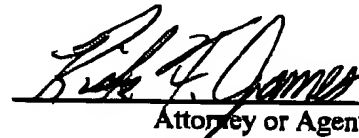
It is believed that this submission is fully responsive to the outstanding Office Acti n. However, should any issues remain unresolved, the Examiner is encouraged to contact the undersigned at the number listed below so that all matters may be expeditiously resolved.

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June 11, 2003  
Date of Signature

Post Office Address (to which correspondence is to be sent):  
ExxonMobil Chemical Company  
Law Technology  
P. O. Box 2149  
Baytown, Texas 77522-2149  
Telephone No. (281) 834-2438  
Facsimile No. (281) 834-2911

Respectfully submitted,

  
Attorney or Agent

Rick F. James  
Registration No. 48,772

GROUP 1700

JUN 12 2003

FAX RECEIVED

**TERMINAL DISCLAIMER TO OBVIATE A DOUBLE PATENTING  
REJECTION OVER A PRIOR PATENT**

Docket Number (Optional)

10236 #13

Filed: **November 16, 2000**For: **"Improved Lamination Grade Coextruded Heat-Sealable Film"**In re Application of: **Karen A. SHEPPARD et al.**Application No.: **09/714,332**

The owner, ExxonMobil Oil Corporation of 100% interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 to 156 and 173, as presently shortened by any terminal disclaimer, of prior U.S. Patent Application No. **6,472,077**. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

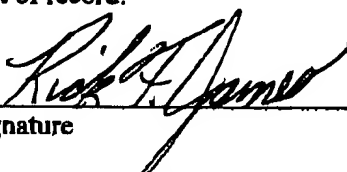
In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 to 156 and 173 of the prior patent, as presently shortened by any terminal disclaimer, in the event that it later: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims cancelled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

1. ☒ For submissions on behalf of an organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. ☒ The undersigned is an attorney or agent of record.

  
Signature

June 11, 2003  
Date

Rick F. James, Registration No. 48,772  
Typed or printed name

- ☒ Terminal disclaimer fee under 37 CFR 1.20(d) included.

\*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner).

Form PTO/SB/96 may be used for mailing this certification. See MPEP § 324.

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS.